

**Dixie Lime and Stone Company and International Chemical Workers Union, Joint Council #1 and its Local 1011, Case 12-CA-10426**

10 June 1983

**DECISION AND ORDER**

BY MEMBERS JENKINS, ZIMMERMAN, AND  
HUNTER

Upon a charge filed on 12 November 1982 by International Chemical Workers Union, Joint Council #1 and its Local 1011, herein called the Union, and duly served on Dixie Lime and Stone Company, herein called Respondent, the General Counsel of the National Labor Relations Board, by the Regional Director for Region 12, issued a complaint and notice of hearing on 1 December 1982 against Respondent, alleging that Respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the National Labor Relations Act, as amended. Copies of the charge and complaint and notice of hearing before an administrative law judge were duly served on the parties to this proceeding.

With respect to the unfair labor practices, the complaint alleges in substance that on 24 September 1982, following a Board election in Case 12-RC-6017, the Union was duly certified as the exclusive collective-bargaining representative of Respondent's employees in the unit found appropriate;<sup>1</sup> and that, commencing on or about 9 November 1982, and at all times thereafter, Respondent has refused, and continues to date to refuse, to bargain collectively with the Union as the exclusive bargaining representative, although the Union has requested and is requesting it to do so. On 13 December 1982 Respondent filed its answer to the complaint admitting in part, and denying in part, the allegations in the complaint.

On 10 January 1983 counsel for the General Counsel filed directly with the Board a Motion for Summary Judgment, with exhibits attached. Subsequently, on 19 January 1983 the Board issued an order transferring the proceeding to the Board and a Notice To Show Cause why the General Counsel's Motion for Summary Judgment should not be granted. Respondent thereafter filed as its response to the Notice To Show Cause a document entitled

"Motion in Opposition to General Counsel's Motion for Summary Judgment."

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Upon the entire record in this proceeding, the Board makes the following:

**Ruling on the Motion for Summary Judgment**

In its answer to the complaint and response to the Notice To Show Cause, Respondent denies the request and refusal to bargain and asserts that the Union's certification was improper on the basis of Respondent's objections to the election and its exceptions to the Hearing Officer's report and recommendations and supplemental report and recommendations in the underlying representation proceeding.

Review of the record herein, including the record in Case 12-RC-6017, reveals that an election, conducted pursuant to a Stipulation for Certification Upon Consent Election on 5 March 1981 resulted in a vote of 39 to 25 in favor of the Union, with 5 ballots challenged, and 1 void ballot. Thereafter, Respondent filed timely objections to conduct affecting the results of the election, alleging, in substance, that (1) a union representative made threatening, coercive, and inflammatory comments which contained threats of physical violence, including death, to employees who did not join the Union; (2) that a union representative threatened that the Union would take any and all steps to prevent any employee from crossing any picket line or working during any strike at Respondent's premises and that no person would be permitted to cross any picket line of the Union; and (3) that union representatives communicated throughout the election campaign that Respondent would fire all employees who had indicated support for the Union if the Union did not win the election.

After an investigation, the Regional Director issued his Report on Objections on 6 April 1981 in which he recommended that Respondent's objections be overruled in their entirety and that the Union be certified. Thereafter, Respondent filed exceptions to the Regional Director's report. On 14 September 1981 the Board, having considered the Regional Director's report, Respondent's exceptions thereto, and the entire record, ordered that the matter be remanded to the Regional Director for Region 12 for a hearing on Respondent's Objections 1 and 2 (the alleged threats of physical violence and threats to prevent any employee from crossing a union picket line in the event of a strike). Thereafter, a hearing was held before a

<sup>1</sup> Official notice is taken of the record in the representation proceeding, Case 12-RC-6017, as the term "record" is defined in Secs. 102.68 and 102.69(g) of the Board's Rules and Regulations, Series 8, as amended. See *LTV Electrosystems*, 166 NLRB 938 (1967), *enfd.* 388 F.2d 683 (4th Cir. 1968); *Golden Age Beverage Co.*, 167 NLRB 151 (1967), *enfd.* 415 F.2d 26 (5th Cir. 1969); *Intertype Co. v. Penello*, 269 F.Supp. 573 (D.C.Va. 1967); *Follett Corp.*, 164 NLRB 378 (1967), *enfd.* 397 F.2d 91 (7th Cir. 1968); Sec. 9(d) of the NLRA, as amended.

duly designated Hearing Officer, and on 17 November 1981 the Hearing Officer issued his report and recommendations on objections, in which he recommended that Respondent's Objections 1 and 2 be overruled. Respondent filed exceptions to the Hearing Officer's report and recommendations, in which it contended that it was denied a fair and impartial hearing and that the Hearing Officer failed to resolve the substantial questions raised regarding the validity of the election in his report and recommendations. On 12 February 1982 the Board issued an order remanding the proceeding for the purpose of issuing a supplemental report containing specific credibility resolutions, findings of fact concerning the testimony of witnesses, and recommendations on Respondent's Objections 1 and 2. Thereafter, a supplemental hearing was held, and on 11 May 1982 the Hearing Officer issued his supplemental report and recommendations on objections, in which he recommended that Respondent's Objections 1 and 2 be overruled and the Union be certified. On 24 September 1982 the Board, having considered the Hearing Officer's supplemental report and recommendations, Respondent's exceptions, and the entire record in the case, adopted the findings and recommendations of the Hearing Officer and certified the Union as the exclusive bargaining agent of the employees in the unit stipulated to be appropriate. It thus appears that Respondent is attempting in this proceeding to relitigate issues fully litigated and finally determined in the representation proceeding.

It is well settled that, in the absence of newly discovered or previously unavailable evidence or special circumstances, a respondent in a proceeding alleging a violation of Section 8(a)(5) is not entitled to relitigate issues which were or could have been litigated in a prior representation proceeding.<sup>2</sup>

All issues raised by Respondent in this proceeding were or could have been litigated in the prior representation proceeding, and Respondent does not offer to adduce at a hearing any newly discovered or previously unavailable evidence, nor does it allege that any special circumstances exist herein which would require the Board to reexamine the decision made in the representation proceeding. We therefore find that Respondent has not raised any issue which is properly litigable in this unfair labor practice proceeding. Accordingly, we grant the Motion for Summary Judgment.<sup>3</sup>

<sup>2</sup> See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941); Rules and Regulations of the Board, Secs. 102.67(f) and 102.69(c).

<sup>3</sup> In its answer to the complaint, Respondent denies pars. 7 and 8 of the complaint, which allege that, on 25 October 1982 the Union requested that Respondent bargain collectively with it, and that since on or about 9 November 1982 Respondent has failed and refused to recognize or bargain with the Union. Counsel for the General Counsel, however, has submitted a copy of a letter, sent by the Union and dated 25 October

On the basis of the entire record, the Board makes the following:

## FINDINGS OF FACT

### I. THE BUSINESS OF RESPONDENT

Respondent is a Delaware corporation engaged in the mining and processing of limerock and related products at its office and place of business in Sumterville, Florida. In the course of its business operations during the 12 months preceding issuance of the complaint, Respondent sold and shipped products, goods, and materials valued in excess of \$50,000 from its Sumterville, Florida, facility to points outside the State of Florida.

We find, on the basis of the foregoing, that Respondent is, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and that it will effectuate the policies of the Act to assert jurisdiction herein.

### II. THE LABOR ORGANIZATION INVOLVED

International Chemical Workers Union, Joint Council #1 and its Local 1011, is a labor organization within the meaning of Section 2(5) of the Act.

### III. THE UNFAIR LABOR PRACTICES

#### A. *The Representation Proceeding*

##### 1. The unit

The following employees of Respondent constitute a unit appropriate for collective-bargaining

1982 requesting that Respondent meet and negotiate in good faith with the Union. Furthermore, Respondent acknowledged its receipt of the Union's letter in a response letter sent to the Union, dated 9 November 1982. In this letter of response, Respondent declined the Union's request to bargain "at [that] time" on the basis of its disagreement with the certification of the Union. Respondent also noted therein its intention to seek review of the Board's certification of the Union in the Court of Appeals for the Eleventh Circuit. Although Respondent contends in its response to the Notice To Show Cause that substantial or material factual issues exist with respect to its objections, it does not argue that a factual issue has been raised regarding the request and refusal to bargain. Further, it has not at any material time herein expressed a willingness to bargain with the Union. Finally, it is clear from its position set forth in its response to the Notice To Show Cause that Respondent contends that it is under no legal obligation to bargain with the Union on the grounds that the certification of the Union was invalid. Accordingly, we find that Respondent's denials of pars. 7 and 8 of the complaint raise no substantial or material issue of fact warranting further hearing in this case. We also find that Respondent's remaining denials in its answer raise no substantial or material issues of fact warranting a hearing.

Member Hunter notes that he did not participate in the Board proceedings in the underlying representation case. He further notes that he would not adopt the Hearing Officer's reliance on *Hickory Springs Manufacturing Co.*, 239 NLRB 641 (1978), which in any event has since been overruled in *Home and Industrial Disposal Service*, 266 NLRB 100 (1983). Finally, Member Hunter notes and relies on the Hearing Officer's further finding that in fact no threats were made by the Union or its representatives.

purposes within the meaning of Section 9(b) of the Act:

*Included:* All full-time and regular part-time employees, including production and maintenance employees, construction division employees, laboratory employees, lime plant employees, ag-lime employees, mining employees, warehouse employees, janitor and leadmen employed by the Employer at its Sumterville, Florida facility.

*Excluded:* Office clerical employees, lime plant foremen, professional employees, guards and supervisors as defined in the Act.

## 2. The certification

On 5 March 1981 a majority of the employees of Respondent in said unit, in a secret-ballot election conducted under the supervision of the Regional Director for Region 12, designated the Union as their representative for the purpose of collective bargaining with Respondent.

The Union was certified as the collective-bargaining representative of the employees in said unit on 24 September 1982, and the Union continues to be such exclusive representative within the meaning of Section 9(a) of the Act.

### B. *The Request To Bargain and Respondent's Refusal*

Commencing on or about 25 October 1982, and at all times thereafter, the Union has requested Respondent to bargain collectively with it as the exclusive collective-bargaining representative of all the employees in the above-described unit. Commencing on or about 9 November 1982, and continuing at all times thereafter to date, Respondent has refused, and continues to refuse, to recognize and bargain with the Union as the exclusive representative for collective bargaining of all employees in said unit.

Accordingly, we find that Respondent has, since 9 November 1982, and at all times thereafter, refused to bargain collectively with the Union as the exclusive representative of the employees in the appropriate unit and that, by such refusal, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

## IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Respondent set forth in section III, above, occurring in connection with its operations described in section I, above, have a close, intimate, and substantial relationship to trade, traf-

fic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

## V. THE REMEDY

Having found that Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act, we shall order that it cease and desist therefrom, and, upon request, bargain collectively with the Union as the exclusive representative of all employees in the appropriate unit and, if an understanding is reached, embody such understanding in a signed agreement.

In order to insure that the employees in the appropriate unit will be accorded the services of their selected bargaining agent for the period provided by law, we shall construe the initial period of certification as beginning on the date Respondent commences to bargain in good faith with the Union as the recognized bargaining representative in the appropriate unit. See *Mar-Jac Poultry Company*, 136 NLRB 785 (1962); *Lamar Hotel*, 140 NLRB 226, 229 (1962), *enfd.* 328 F.2d 600 (5th Cir. 1964), *cert. denied* 379 U.S. 817; *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), *enfd.* 350 F.2d 57 (10th Cir. 1965).

The Board, upon the basis of the foregoing facts and the entire record, makes the following:

## CONCLUSIONS OF LAW

1. Dixie Lime and Stone Company is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. International Chemical Workers Union, Joint Council #1 and its Local 1011, is a labor organization within the meaning of Section 2(5) of the Act.

3. The following unit constitutes a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

*Included:* All full-time and regular part-time employees, including production and maintenance employees, construction division employees, laboratory employees, lime plant employees, ag-lime employees, mining employees, warehouse employees, janitor and leadmen employed by the Employer at its Sumterville, Florida facility.

*Excluded:* Office clerical employees, lime plant foremen, professional employees, guards and supervisors as defined in the Act.

4. Since 24 September 1982 the above-named labor organization has been and now is the certified and exclusive representative of all employees in the

aforesaid appropriate unit for the purpose of collective bargaining within the meaning of Section 9(a) of the Act.

5. By refusing on or about 9 November 1982, and at all times thereafter, to bargain collectively with the above-named labor organization as the exclusive bargaining representative of all the employees of Respondent in the appropriate unit, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) of the Act.

6. By the aforesaid refusal to bargain, Respondent has interfered with, restrained, and coerced, and is interfering with, restraining, and coercing, employees in the exercise of the rights guaranteed them in Section 7 of the Act, and thereby has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

7. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

### ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that Respondent, Dixie Lime and Stone Company, Sumterville, Florida, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment with International Chemical Workers Union, Joint Council #1 and its Local 1011, as the exclusive bargaining representative of its employees in the following appropriate unit:

*Included:* All full-time and regular part-time employees, including production and maintenance employees, construction division employees, laboratory employees, lime plant employees, ag-lime employees, mining employees, warehouse employees, janitor and leadmen employed by the Employer at its Sumterville, Florida facility.

*Excluded:* Office clerical employees, lime plant foremen, professional employees, guards and supervisors as defined in the Act.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Upon request, bargain with the above-named labor organization as the exclusive representative of all employees in the aforesaid appropriate unit with respect to rates of pay, wages, hours, and other terms and conditions of employment and, if an understanding is reached, embody such understanding in a signed agreement.

(b) Post at its Sumterville, Florida, office and place of business copies of the attached notice marked "Appendix."<sup>4</sup> Copies of said notice, on forms provided by the Regional Director for Region 12, after being duly signed by Respondent's representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees customarily are posted. Reasonable steps shall be taken by Respondent to ensure that said notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director for Region 12, in writing, within 20 days from the date of this Order, what steps have been taken to comply herewith.

<sup>4</sup> In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

### APPENDIX

#### NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States of Government

WE WILL NOT refuse to bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment with International Chemical Workers Union, Joint Council #1 and its Local 1011, as the exclusive representative of the employees in the bargaining unit described below.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL, upon request, bargain with the above-named Union, as the exclusive representative of all employees in the bargaining unit described below, with respect to rates of pay, wages, hours, and other terms and conditions of employment and, if an understanding

is reached, embody such understanding in a signed agreement. The bargaining unit is:

*Included:* All full-time and regular part-time employees, including production and maintenance employees, construction division employees, laboratory employees, lime plant employees, ag-lime employees, mining employees, warehouse employees, janitor and

leadmen employed by the Employer at its Sumterville, Florida facility.

*Excluded:* Office clerical employees, lime plant foremen, professional employees, guards and supervisors as defined in the Act.

DIXIE LIME AND STONE COMPANY